

commenters' views on the impact of these provisions on the interconnection rights to be afforded mobile service providers.⁵⁰

**A. Existing Interconnection Rights Should
Apply for Commercial Mobile Services**

The Notice proposes to preempt state regulation of the right of commercial mobile service providers to interconnect with LECs and to specify the type of interconnection.⁵¹ It also proposes to give PCS providers a federally protected right to interconnect with LEC facilities regardless of their classification as commercial or private.⁵²

GTE agrees with the Commission that commercial mobile service providers should enjoy the same range of interconnection rights currently afforded to Part 22 licensees. Such rights allow the Part 22 licensee to interconnect in a manner that is reasonable for both parties and include a requirement that the Part 22 licensee and the LEC negotiate in good faith. These co-carrier rights also should be extended to the CMS offerings of cellular and PCS providers that offer both commercial and private services under flexible service options.⁵³ Any other approach would be confusing and likely would engender controversy.

GTE further notes that purely private mobile service providers already have the right to request and obtain interconnection with the public switched network to meet their needs. Affording co-carrier interconnection rights is not

⁵⁰ Notice ¶¶ 71-75.

⁵¹ Id. ¶ 71.

⁵² Id. ¶ 73.

⁵³ Id. ¶ 47.

practicable or appropriate given the large number of such systems. But, private service providers can and should have access to the interconnection necessary to the conduct of their businesses.

Finally, GTE urges the Commission to defer considering whether CMS providers should be obligated to offer interconnection to other CMS providers.⁵⁴ The competitive nature of the marketplace should assure that service providers are fully responsive to any customer requirements for interconnected service. If it appears that such demand is not being met or that the lack of an interconnection obligation unduly constrains particular classes of service providers, then the Commission may choose to revisit this issue.

B. Equal Access Should Not Be Required

GTE does not support the adoption of requirements that would subject CMS providers to equal access obligations resembling those presently imposed on local exchange carriers.⁵⁵ Historically, equal access obligations have been imposed only on landline local exchange carriers, not on competitive entities such as cellular carriers.⁵⁶ CMS providers, of course, operate in a robustly competitive marketplace where customers enjoy a wide range of service options, rendering equal access obligations unnecessary and inappropriate.

In addition, equal access would impose significant hardships on CMS providers without producing overriding consumer benefits. Cellular service

⁵⁴ See id. ¶ 71.

⁵⁵ Notice ¶ 71.

⁵⁶ The unique exception is cellular companies owned by the Bell Operating Companies ("BOCs"), which must provide equal access pursuant to the MFJ. See United States v. Western Elec. Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd mem. sub nom. Maryland v. U.S., 460 U.S. 1001 (1983).

areas -- CGSAs and RSAs -- were configured without regard to the LATA boundaries upon which exchange equal access is based. Cellular systems are commonly designed for the most efficient distribution of communications within that licensed area. Moreover, many GTE cellular systems operate in multistate "clusters" that provide cost-effective, wide-area services.

GTE suspects that, insofar as PCS MTAs and BTAs likewise do not conform to LATAs, these new CMS providers will be making similarly sensible design decisions. Yet, equal access would require disaggregating these systems so that interstate, intra-service area and intra-cluster calls would be handed off to the interexchange carrier of the subscriber's choice -- negating significant investment in wide-area systems and likely raising subscribers' costs.

All this ignores the fundamental fact that equal access is simply impossible to implement as a technical matter in many common mobile service contexts. For example, equal access cannot be provided along with inter-system hand-offs, and may be impossible in roaming situations, depending on the capabilities of the particular system. Nor can equal access reasonably be implemented with respect to signalling, as some interexchange carriers have requested. Accordingly, there is no basis for imposing equal access obligations on CMS providers.⁵⁷

**VI. THE FCC SHOULD ENSURE SOUND STANDARDS
FOR REVIEWING STATE REQUESTS TO
EXTEND REGULATION OF MOBILE SERVICES**

Pursuant to revised Section 332(c)(3)(A) of the Budget Act, state and local rate and entry regulation of CMS is preempted as of August 10, 1994.

⁵⁷ As shown above, it is particularly important that cellular, PCS and ESMRs be treated the same for equal access and other purposes.

States may, however, petition the FCC (a) to extend rate regulation after that date where such regulation was in place as of June 1, 1993, and the petition is filed by August 10, 1994 or (b) to initiate rate regulation at any time. Either type of petition may be granted upon a showing that:

- (1) Market conditions will not protect subscribers from unjust, unreasonable, or discriminatory rates; or
- (2) Such conditions exist and the [CMS for which regulation is sought] is a replacement for landline telephone exchange service for a substantial portion of landline telephone exchange service in the state.⁵⁸

The Commission must complete action on petitions for extension of regulation within one year and for imposition of new regulation within nine months.⁵⁹ The agency seeks comment on the factors to be addressed and procedures to be used in resolving such petitions.

Consistent with the acknowledged competitive state of the CMS market and the FCC's proposal to forbear from tariff regulation of CMS, GTE urges the Commission to establish a strong presumption against the imposition or continuation of state regulation where there are multiple CMS providers. In such a situation, states should bear a heavy burden in attempting to demonstrate that competition among those providers will not protect subscribers from abuse. This would further the Congressional intent that states not be permitted to regulate CMS, even when provided for basic telephone service, where "several companies offer radio service as a means of providing basic telephone service in competition with each other, such that consumers can choose among alternative

⁵⁸ Notice ¶ 79; see 47 U.S.C. § 332(c)(3)(B).

⁵⁹ Id. ¶ 79 & nn.100-101.

providers of this service."⁶⁰ Congress clearly expected that states would be required to justify all aspects of their regulatory programs with regard to CMS when challenged.⁶¹

The Commission should also insist that any state regulation permitted by it be narrowly tailored in terms of its scope and duration to address only the identified abuses. Moreover, the Commission should require that, consistent with Congressional goals and "with the public interest, similar services are accorded similar regulatory treatment" by the states.⁶² In this manner, the agency can ensure that State regulation does not undermine its attempt to establish a level playing field for all CMS providers on the federal level.

Finally, because state regulation continues in effect during the pendency of a timely-filed state petition for extension, the FCC should establish procedures which would permit it to act promptly on such a request and well within the one year period established by statute. Expedited action is critically important to secure the early realization of the public interest benefits expected under the legislation as well as to prevent interim market dislocations. Differential regulation of competitive services should not be predicated solely on the fact that certain providers of new CMS offerings might not be subject to grandfathered state regulation while a petition for extension remains pending.

⁶⁰ H.R. Rep. No. 213, 103d Cong., 1st Sess. 493 (1993), reprinted in 1993 U.S.C.C.A.N. 1088, 1182.

⁶¹ Id. at 492-93; 1993 U.S.C.C.A.N. at 1181-82.


⁶² Id. at 494; 1993 U.S.C.C.A.N. at 1183.

CONCLUSION

For the foregoing reasons, the Commission should ensure that all comparable competitive mobile services have the same regulatory rights and obligations. The FCC should further exercise its forbearance authority to the maximum lawful extent to relieve mobile service providers from unnecessary, burdensome, and counterproductive regulatory requirements. Finally, states seeking to retain or impose rate regulation on mobile services should face a high hurdle of proof in view of the competitive nature of the market and the adverse consequences of any disparate regulation for the public.

Respectfully submitted,

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November 8, 1993

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